



February 1, 2005

HOUSE BILL No. 1129

DIGEST OF HB 1129 (Updated January 26, 2005 3:34 pm - DI 51)

Citations Affected: IC 6-4.1; IC 29-1; IC 33-37; IC 34-30; noncode.

Synopsis: Inheritance tax and will depository. Increases the inheritance tax deduction for an amount paid for a memorial for a decedent from \$1,000 to \$5,000. Allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. Requires the circuit court clerk to collect a \$25 fee for depositing the will, unless the circuit court clerk waives the fee. Provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the inheritance tax if the adoption was finalized before July 1, 2004. (Current law requires an individual to be adopted before being emancipated to be treated as the natural child of the adopting parent.) Specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the inheritance tax, whether or not the stepchild is adopted by the transferor. Provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the inheritance tax. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2004 (retroactive); July 1, 2005.

Foley, Bardon, Kuzman

January 6, 2005, read first time and referred to Committee on Judiciary.
January 11, 2005, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.
January 31, 2005, reported — Do Pass.

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February 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1129

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-4.1-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004 (RETROACTIVE)]: Sec. 3.

(a) "Class A transferee" means a transferee who is a:

- (1) ~~a~~ lineal ancestor of the transferor;
- (2) ~~a~~ lineal descendant of the transferor; ~~or~~
- (3) ~~a~~ stepchild of the transferor, **whether or not the stepchild is adopted by the transferor; or**
- (4) **lineal descendant of a stepchild of the transferor, whether or not the stepchild is adopted by the transferor.**

(b) "Class B transferee" means a transferee who is a:

- (1) brother or sister of the transferor;
- (2) descendant of a brother or sister of the transferor; or
- (3) spouse, widow, or widower of a child of the transferor.

(c) "Class C transferee" means a transferee, except a surviving spouse, who is neither a Class A nor a Class B transferee.

(d) For purposes of this section, a legally adopted child is to be treated as if the child were the natural child of the child's adopting

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parent if the adoption occurred before the individual was totally emancipated. **However, an individual adopted after being totally emancipated shall be treated as the natural child of the adopting parent if the adoption was finalized before July 1, 2004.**

(e) For purposes of this section, if a relationship of loco parentis has existed for at least ten (10) years and if the relationship began before the child's fifteenth birthday, the child is to be considered the natural child of the loco parentis parent.

(f) As used in this section, "stepchild" means a child of the transferor's surviving, deceased, or former spouse who is not a child of the transferor.

SECTION 2. IC 6-4.1-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) For purposes of this section, the term "property subject to the inheritance tax" means property transferred by a decedent under a taxable transfer.

(b) The following items, and no others, may be deducted from the value of property interests transferred by a resident decedent under ~~his~~ **the decedent's** will, under the laws of intestate succession, or under a trust:

- (1) the decedent's debts which are lawful claims against ~~his~~ **the decedent's** resident estate;
- (2) taxes on the decedent's real property which is located in this state and subject to the inheritance tax, if the real property taxes were a lien at the time of the decedent's death;
- (3) taxes on decedent's personal property which is located in this state and subject to the inheritance tax, if the personal property taxes are a personal obligation of the decedent or a lien against the property and if the taxes were unpaid at the time of the decedent's death;
- (4) taxes imposed on the decedent's income to date of death, if the taxes were unpaid at the time of ~~his~~ **the individual's** death;
- (5) inheritance, estate, or transfer taxes, other than federal estate taxes, imposed by other jurisdictions with respect to intangible personal property which is subject to the inheritance tax;
- (6) mortgages or special assessments which, at the time of decedent's death, were a lien on any of decedent's real property which is located in this state and subject to the inheritance tax;
- (7) ~~the~~ decedent's funeral expenses;
- (8) amounts, not to exceed ~~one~~ **five** thousand dollars ~~(\$1,000)~~, **(\$5,000)**, paid for a memorial for the decedent;
- (9) expenses incurred in administering property subject to the inheritance tax, including but not limited to reasonable attorney

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fees, personal representative fees, and trustee fees;

(10) the amount of any allowance provided to the resident decedent's children by IC 29-1-4-1; and

(11) the value of any property actually received by a resident decedent's surviving spouse in satisfaction of the allowance provided by IC 29-1-4-1, regardless of whether or not a claim for that allowance has been filed under IC 29-1-14.

(c) The amounts which are deductible under subsection (b)(6) of this section are deductible only from the value of the real property encumbered by the mortgage or special assessment.

SECTION 3. IC 29-1-7-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3.1. (a) This section applies whether it is:**

(1) known; or

(2) unknown;

whether a testator is living.

(b) As used in this section, "depositor" refers to a person who deposits a will with the circuit court clerk under this section.

(c) As used in this section, "will" refers to an original:

(1) will;

(2) codicil; or

(3) will and codicil.

(d) A person may deposit a will with the circuit court clerk of the county in which the testator resided when the testator executed the will. The circuit court clerk may assume, without inquiring into the facts, that the depositor's representation is accurate as to the county where the testator resided when the testator executed the will. Except as provided in subsection (e), the circuit court clerk shall collect a fee of twenty-five dollars (\$25) for the deposit of the will. The circuit court clerk shall deposit the fee in the clerk's record perpetuation fund under IC 33-37-5-2.

(e) The circuit court clerk shall waive the fee under subsection (d) if:

(1) a court with probate jurisdiction of the county where the will is deposited certifies that the depositor deposits the will:

(A) as a participant; or

(B) for a participant;

in a program of the supreme court, including the Judges and Lawyers Assistance Program established under Rule 31 of the supreme court Rules for Admission to the Bar and the Discipline of Attorneys; and

(2) the certification described in subdivision (1) accompanies

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the will when the will is deposited.

(f) Upon receipt of a will under this section, the circuit court clerk shall:

- (1) provide the depositor with a receipt for the will;
- (2) place the will in an envelope and seal the envelope securely in the presence of the depositor;
- (3) designate on the envelope the:
 - (A) date of deposit;
 - (B) name of the testator; and
 - (C) name and address of the depositor; and
- (4) index the will alphabetically by the name of the testator.

An envelope and will deposited under this section is not a public record under IC 5-14-3.

(g) During the testator's lifetime, the circuit court clerk shall:

- (1) keep the envelope containing the will sealed; and
- (2) deliver the envelope to:
 - (A) the testator; or
 - (B) a person authorized, in a writing signed by the testator, to receive the envelope.

(h) If the circuit court clerk has custody of the will after the death of the testator, the circuit court clerk may or shall deliver the will to the court that has jurisdiction of the administration of the decedent's estate as set forth in section 3 of this chapter.

(i) A circuit court clerk may destroy a will deposited under this section if:

- (1) the circuit court clerk has not received notice of the death of the testator; and
- (2) at least one hundred (100) years have passed since the date the will was deposited.

(j) A depositor that complies with this section is immune from civil liability for depositing the will.

SECTION 4. IC 33-37-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Each clerk shall establish a clerk's record perpetuation fund. The clerk shall deposit all the following in the fund:

- (1) Revenue received by the clerk for transmitting documents by facsimile machine to a person under IC 5-14-3.
- (2) Document storage fees required under section 20 of this chapter.
- (3) The late payment fees imposed under section 22 of this chapter that are authorized for deposit in the clerk's record perpetuation fund under IC 33-37-7-1 or IC 33-37-7-2.

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1 **(4) The fees required under IC 29-1-7-3.1 for deposit of a will.**

2 (b) The clerk may use any money in the fund for the following
3 purposes:

4 (1) The preservation of records.

5 (2) The improvement of record keeping systems and equipment.

6 SECTION 5. IC 34-30-2-122.5 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2005]: **Sec. 122.5. IC 29-1-7-3.1 (Concerning**
9 **a person who deposits a will with a circuit court clerk).**

10 SECTION 6. [EFFECTIVE JULY 1, 2004 (RETROACTIVE)]
11 **IC 6-4.1-1-3, as amended by this act, applies to the estate of an**
12 **individual who dies after June 30, 2004.**

13 SECTION 7. [EFFECTIVE JULY 1, 2005] **IC 6-4.1-3-13, as**
14 **amended by this act, applies to the estate of a person who dies after**
15 **June 30, 2005.**

16 SECTION 8. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1129, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

THOMAS, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1129, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ESPICH, Chair

Committee Vote: yeas 24, nays 0.

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